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May 29, 2014

Hon. Ellen Polimeni
Mayor
City of Canandaigua
2 North Main Street
Canandaigua, New York 14424

Re: Austin Harvard LLC, applicant for Special Event Permit – June 5, 2014

Dear Mayor Polimeni:

On Tuesday, May 13, 2014, I appeared at the meeting of your Environmental Committee with my client, Lynne Crawford, director of the Waterfront Art Festival, and, as sole member of Austin Harvard LLC, owner of the Festival.

The Committee considered the granting of a permit as a Special Event for the 41st occurrence of the Waterfront Art Festival, to be held on July 26 & 27, 2014, with a set-up date of Friday, July 25, 2014.

As the Council is aware, Ms. Crawford applied for a permit as a Special Event because not only has the Festival been characterized and treated as a Special Event in years past (2003-2009), but by your own Code (**under Peddling and Soliciting 538 Attachment 1, Subd. 14**) it is named as a **Special Event**. Furthermore, the City's website designates the Festival as a **"Special Event."** By your own **"Policies and Procedures"** the festival meets the standards and criteria for treatment as a Special Event, and more so, as a **"Recurring Special Event,"** again, under said policy.

The importance of this characterization is that Ms. Crawford has completed the application, paid the fee, and is willing to comply with the reasonable requests of the City for reimbursement of its expenses.

Nevertheless, at the Environmental Committee meeting of May 13th, with the full Committee membership present, and also in the presence and with the comments of three additional members of the City Council, the Committee did vote in support of granting the Festival a Special permit, but with some unusual – i.e., not stated in your policy, nor in your Code – restrictions and conditions including not allowing admission to be charged.

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In February of this year, the Council approved and the Festival was offered a Revocable License that does allow admission to be charged but requiring payment to the City of two-thirds of the gate, or entry fees. There was no explanation or showing of the basis for this calculation, and Ms. Crawford has consistently agreed to reimburse the City for its actual and fair expenses. The two-thirds requirement is not only not in your Policy, but appears to be an arbitrary fixed figure, the purpose of which is to either discourage the Festival or raise money by taking a proportion of a profit-making venture, of which the City is not a part. This would constitute a user fee in excess of providing a service for the purpose of adding to the general fund, which, you must be aware, is neither statutorily nor constitutionally permissible.

Additionally, the stated reason for the arbitrary 2/3 of the gate fee (again, minutes from the meeting are not yet available) was that the general public would not have free access to that portion of the Park where the Festival was being held. As I stated, and with all due respect, this is arbitrary and unsubstantiated. Any exclusive use of a public facility by members of the public for any purpose, be it weddings, graduation parties, social events, fundraisers, etc. are exclusive to those permittees who pay their fee for the use. No foundation for the particular charge imposed on this Festival is warranted or supported by any empirical data.

I would also add that there was no actual breakdown of the amount set forth as the projected cost to the City, \$10,790.20, which is over 18 times (1800%) that projected for the Downtown Art and Music Festival to be held the weekend before, which will cover a much greater geographical area and to which is expected two and a half to three times the number of persons attending as the Waterfront Art Festival.

I would also ask the Council to consider the benefits to the City from hosting this Festival. These benefits include collection of sales tax both from visitors using City businesses as well as on the actual sales at the Festival, hotel tax on visitor's and artist's lodging, plus the benefit of showing the City off to visitors who may not have visited Canandaigua without the draw of the Festival. There are visitors who have attended the Festival, been introduced to the City and Lakefront because of it and returned for another visit that wouldn't have happened otherwise. The City definitely benefits financially from the Festival and in fact has never lost money providing services to the Festival because the Festival has always paid the City more than its actual, direct expenses. Plus the Festival is working with the developers of the North Shore Project to find ways to cooperatively promote both the Project and the Festival. The opportunity to use the Festival to promote the Project was not lost on the developers and will only increase in value to the Project once property sales actually commence.

It is universally agreed that well run and popular special events like the Festival are in fact economic development engines for the host community. There is solid economic impact information on one art festival in 2010 and two festivals in 2011, both located in small Mississippi communities, that show the impact on the local economy for the events were \$215, \$125. and \$185 per visitor for an average of \$165 per visitor. Even if the Waterfront Art Festival

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only brings in ½ of that average economic impact – with at least 7,000 visitors - that would be over **\$500,000** to the Canandaigua economy. That is more than enough to cover any expenses not captured by the Special Event Policy fee schedule and the attendance certainly says that at least 7,000 people think paying \$3 for a beautiful day in the park with music, art and artists is a good deal.

As I am personally unable to appear before the Council on June 5th, I respectfully ask for consideration of these comments in making your determination upon both the granting of the Permit and any conditions thereto, and that they be made part of the record of the proceedings.

Thank you.

Respectfully,

Charles J. Genese

Cc: Ms. Lynne Crawford
Hon. **David Forrest**, City Manager
Hon. **Michele O. Smith**, Corporation Counsel